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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

COMMENTS OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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April 12, 1996

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TABLE OF CONTENTS

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The Personal Communications Industry Association ("PCIA")[1] respectfully submits its comments regarding the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.[2] The *Notice* seeks comment on how to implement Section 254 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("1996 Act").[3] PCIA is primarily concerned that the

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[1] PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

[2] FCC 96-93 (Mar. 8, 1996) ("*Notice*"). By Order of the Commission, DA 96-463 (Apr. 1, 1996), the deadline for filing comments in this proceeding was extended until April 12, 1996.

[3] Telecommunications Act of 1996, Pub. L. No. 104-104, § 101(a), 110 Stat. 56
(continued...)

universal service scheme adopted to implement the recent Congressional mandates be equitably funded, narrowly targeted, and technologically neutral.

I. INTRODUCTION AND SUMMARY

Prior to the enactment of the 1996 Act, telephone service for rural and high-cost areas was subsidized pursuant to the Commission's general authority under Section 1 of the Communications Act of 1934.[4] However, by enacting Section 254, Congress "particulariz[ed] and supplement[ed]" the Commission's authority to make reasonably priced telecommunications services available to all Americans.[5] This rulemaking is intended to aid in implementing that Congressional mandate.[6]

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[3](...continued)
(1996) (*to be codified at* 47 U.S.C. § 254). Further references will be to the statutory sections as they will be codified.

[4] 47 U.S.C. § 151. Under its Section 1 authority, the FCC did not promulgate rules that directly assisted "the poor and those living on limited fixed incomes," instead leaving any such programs to the discretion of the "individual states." *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, 96 FCC 2d 781, 795 (1984).

[5] *Notice*, ¶ 3.

[6] PCIA understands that the Joint Board is to complete its recommendations involving the issues in this proceeding within nine months of enactment of the 1996 Act. Pursuant to Sections 254(a) and 410(c), the Joint Board will then forward those recommendations to the Commission for consideration. The Commission is required to conduct a further proceeding to evaluate the Joint Board recommendations; adoption of those recommendations as presented by the Joint Board or as modified, subject to the record compiled by the Commission, is within the discretion of the Commission.

In its *Notice*, the Commission sought comment on defining the specific services that will be supported by the universal service program,[7] ensuring that the definition of universal service evolves,[8] determining which classes of customers will be eligible for these subsidized services,[9] and implementing the universal service program after it has been defined.[10] In addition, the Commission requested interested parties to address which providers should contribute to the universal service fund ("USF"),[11] how contributions should be assessed,[12] and which entity should administer the USF.[13] Finally, the Commission identified the Commissioners, State Commissioners, and state-appointed utility consumer advocate who sit on the Joint Board.[14]

This is not the first time that PCIA has responded to a Commission request for comment on its universal service program. Last year, in CC Docket No. 80-286,[15]

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7 *Notice*, ¶¶ 15-23, 50-58, 77-81, 89-94.

8 *Id.*, ¶¶ 66-70.

9 *Id.*, ¶¶ 41-49, 59-65, 87-88, 104-106.

10 *Id.*, ¶¶ 24-39, 59-65, 82-83, 95-103.

11 *Id.*, ¶¶ 118-120.

12 *Id.*, ¶¶ 121-126.

13 *Id.*, ¶¶ 127-131.

14 *Id.*, ¶¶ 132-133.

15 *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, 10 FCC Rcd 12309 (1995). The instant *Notice* requests that commenters specify which of their proposals made in Docket 80-286 "are consistent with the requirements and intent of the 1996 Act." *Notice*, ¶ 39.

PCIA made a number of suggestions regarding the universal service program. Among the proposals that remain applicable to the instant proceeding are: (1) USF disbursements should be narrowly targeted and funded primarily through a single, explicit funding mechanism and program at a national level; (2) any plan that is implemented must encourage efficient investment and operation through competitive and technological neutrality; (3) the views of the wireless industry should be represented on the newly constituted Joint Board; (4) the plan should minimize the fees levied to support the USF; (5) the hallmark of any USF rules must be the encouragement of competition and the use of market forces to drive down the price and improve the quality of universal service; (6) universal service should be a uniform, evolving, defined set of services/capabilities/features available to residential users on a national basis; and (7) a plan to transition from current universal service funding mechanisms to a new funding mechanism should be implemented in an expedient manner.

PCIA's comments in the instant proceeding reiterate a number of these principles. Preliminarily, the funding mechanism chosen must have a number of properties. First, it must not discriminate against or otherwise disadvantage any provider or class of providers. Second, commercial mobile radio service ("CMRS") providers, as purveyors of a primarily interstate service, should only be required to contribute to the federal universal service fund. This conclusion is supported by the statutory terms of Section 332(c) of the Communications Act, which established a federal regulatory structure for CMRS and specifically addressed the obligations of

CMRS licensees with regard to state universal service funding requirements. Alternatively, mechanisms should be adopted to ensure that CMRS licensees do not double pay. Third, the Commission should adopt an explicit funding mechanism and eliminate all implicit or indirect subsidies for universal service.

In addition, universal service subsidies should be narrowly targeted, limited, and technologically neutral. Such narrow targeting can be accomplished through market-based mechanisms for distributing the fund and stringent prohibitions on cross-subsidization. Further, in some circumstances, wireless service operators may be the most cost-effective providers of service in high-cost areas. In this context, the Commission should ensure that the views of the wireless industry are taken into account when promulgating universal service rules.

II. FUNDING MECHANISMS

The Commission requested comment on which carriers should be required to contribute to the universal service fund,[16] and how contributions should be assessed.[17] As discussed in greater detail below, PCIA believes that the funding mechanism must be non-discriminatory without unduly burdening telecommunications competition or any particular segment of the telecommunications marketplace. Moreover, the Commission should insure that CMRS licensees are not subject to

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[16] *Notice*, ¶¶ 118-120.

[17] *Id.*, ¶¶ 121-126.

inequitable federal and state payment obligations; this could be accomplished by requiring CMRS providers to contribute only to the federal universal service fund. Finally, the Commission should adopt an explicit USF financing method.

A. Any Method of Assessing Contribution Obligations Must Be Non-Discriminatory and Equitable in Light of Marketplace Conditions and Realities

Statutorily, as recognized by the Commission, the method chosen to fund universal service must be "equitable and non-discriminatory,"[18] as well as "competitively neutral."[19] Consistent with those principles, Section 254(d) specifically allows the Commission to "exempt a carrier or class of carriers" from contributing to the universal service fund "if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to . . . universal service would be de minimis."[20] These statutory directives make clear that the Commission can structure a funding plan that takes into account the realities of the marketplace and carrier operations, applied consistent with non-discrimination objectives.

As PCIA previously stated, the Commission should strive to minimize the USF funding obligations, so as not to place undue or uneconomic burdens on the consumers and providers of interstate communications services. This goal can be partially achieved simply through efforts to insure that USF funding is provided only where

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[18] *Id.*, ¶ 121 (citing 47 U.S.C. § 254(b)(4)).

[19] *Id.*, ¶ 126.

[20] 47 U.S.C. § 254(d).

needed and to promote, on a technologically neutral basis, use of the most efficient infrastructure to meet needs for universal service capabilities.

In prescribing the contribution amounts of different segments of the telecommunications industry, Section 254 clearly gives the Commission authority to take into account the opportunities for particular categories of service providers to participate as potential recipients of USF funds. Likewise, the Commission can take into account the potential financial effect of funding obligations on certain types of service providers.

For example, at present, it seems unlikely that messaging services will fall within the definition of universal service as contemplated by Section 254.[21] Messaging licensees as a group thus will have at most a highly limited opportunity to seek to become "eligible" providers of universal services under Section 214(e).[22] The Commission's determination of funding obligations for messaging operators also should take into account the fact that these service providers operate in a highly competitive environment with low profit margins. Finally, messaging licensees already are the providers of the lowest priced telecommunications services, and it is appropriate for the Commission to consider the effect of universal funding obligations on the price of such services. The Commission thus could act to insure the USF funding structure is both

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[21] *See* 47 U.S.C. § 254(c)(1). Messaging services do not currently permit real-time, interactive, two-way voice communications.

[22] 47 U.S.C. § 214(e).

equitable and competitively neutral by taking these factors into account in establishing the amount due from messaging licensees.

The *Notice* specifically suggests three possible bases for funding universal service: (1) gross revenues, as is used for the Telecommunications Relay Services program; (2) revenues net of payments to other carriers, as is used for the collection of regulatory fees; and (3) per-line or per-minute units.[23] PCIA does not endorse any particular funding mechanism at this time, but rather suggests that the Commission carefully scrutinize any proposed scheme for discrimination as well as for the impact on service availability to subscribers. In particular, each method suggested in the *Notice* has the potential to discriminate against one or more classes of carriers. For example, taking a fixed percentage of a carrier's net or gross revenues discriminates against low profit margin carriers such as messaging providers. Such discrimination is present because taking any fixed percentage of revenue from a small, low profit margin business causes greater disruption to its business plan than taking the same percentage of revenue from a large business. Therefore, a graduated system -- like that used to assess federal income taxes -- might be a less discriminatory means of assessing an income based universal service fee.

Further, as noted by the Commission, basing fees on factors such as the number of lines, trunks, or minutes of customer use might also discriminate against certain

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[23] *Notice*, ¶¶ 122-124.

carriers.[24] Such carriers might be subject to arbitrarily large universal service fees simply because their network design or customer calling patterns fell into certain patterns. For example, assessing fees on a per trunk basis might discriminate against small messaging operators that do not have enough customers to fill an entire trunk with traffic, but must utilize the entire trunk in order to interconnect with the public switched network. Similarly, PCS or cellular providers that offer a large number of free minutes of use could be subject to similar discrimination. The Commission must thus examine any proposed plan to assess it for all possible effects.

B. Because CMRS Is an Inherently Interstate Service, CMRS Providers Should Be Required To Contribute Only to the Federal Universal Service Fund

Section 254 contemplates universal service subsidies and funding mechanisms that are bifurcated between federal and state jurisdictions. Specifically, providers of "interstate telecommunications services" must contribute to support mechanisms "established by the Commission to preserve and advance universal service,"[25] while providers of "intrastate telecommunications services" must contribute to support mechanisms "determined by the State" for "the preservation and advancement of universal service in that State."[26]

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[24] *Id.*, ¶ 124.

[25] 47 U.S.C. § 254(d).

[26] 47 U.S.C. § 254(f).

Because CMRS is primarily an interstate service -- both legally and factually -- CMRS providers should be required to contribute only to the interstate universal service fund. Legally, by adding Section 332(c) to the Communications Act of 1934, Congress federalized the treatment of CMRS. Congressional intent to subject all of CMRS to federal regulation is demonstrated by the fact that Section 332(c) addresses virtually every important aspect of CMRS regulation, including rates,[27] market entry,[28] and interconnection obligations.[29] This intent to place CMRS within the ambit of federal regulators is confirmed by the statute's legislative history, which states that the purpose of Section 332(c) "is to establish a Federal regulatory framework governing the offering of all commercial mobile service."[30]

Moreover, Section 332(c) explicitly addresses the obligations of CMRS licensees to pay into state universal service programs. The statute states:

> Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates.[31]

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[27] 47 U.S.C. § 332(c)(3)(A).

[28] *Id.*

[29] 47 U.S.C. § 332(c)(1)(B).

[30] H.R. Rep. No. 213, 103rd Cong., 1st Sess. 490 (1993) ("Conference Report").

[31] 47 U.S.C. § 332(c)(3)(A).

Under this provision, CMRS providers may be subject to state USF funding obligations only at such time as they become a substantial substitute for landline telephone services throughout a state. That clearly is not the case now in any state.

Further, the factual nature of CMRS makes it an inherently interstate service. As stated in the House Report accompanying Section 332(c), "mobile services . . . by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."[32] One example of the interstate nature of CMRS is the fact that many calls begin as intrastate calls and become interstate calls, or vice versa, as the caller crosses and re-crosses state lines. Further, broadband PCS is being licensed based on service areas that are drawn without regard to state boundaries.[33] Similarly, wide-area SMR is being licensed based on the Department of Commerce's Economic Areas, another interstate service area.[34] Finally, many CMRS networks have radio, switching, and backhaul equipment scattered among many different states.

Thus, given the text and legislative history of Section 332(c), and the factually interstate nature of CMRS, CMRS providers should only be required to contribute to the federal universal service fund. Such a classification will further the Congressional intent of treating CMRS as a nationwide service, and foster the development of CMRS

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[32] H.R. Rep. No. 111, 103rd Cong., 1st Sess. 260 (1993) ("House Report").

[33] *Amendment of the Commission's Rules To Establish New Personal Communications Services* (Second Report and Order), 8 FCC Rcd 7700, 7733 (1993).

[34] *Amendment of Part 90 of the Commission's Rules To Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, FCC 95-501 (Dec. 15, 1995).

by not subjecting it to a series of possibly conflicting state regulatory schemes or to the duplicative payment of universal support fees.

If, however, the Commission and the Joint Board decline to adopt this approach, some mechanism must be developed to ensure that CMRS operators are not subject to federal and state contribution requirements based on counting the same base (*e.g.*, revenues) for assessing the fees due. That is, CMRS providers should not be required to contribute to both the federal and state funds based on their entire revenue base or network structure. At present, CMRS licensees do not separate their costs and revenues on an interstate/intrastate basis, and in many cases there is no practical way to do so. Thus, some method must be prescribed in order to prevent such an overlapping assessment of fees. One possible approach may be for state jurisdictions to give CMRS providers credit for any contributions they make to the federal fund or vice versa.

C. The Commission Should Adopt an Explicit USF Funding Mechanism and Eliminate All Subsidies Provided Through Other Mechanisms

Section 254(e) specifies that all universal service support is to be "explicit." in this regard, the Commission queries how best to fund the USF. For example, the dialed equipment minute weighting assistance program provides one source of USF funding.[35] Similarly, some of the current funding is derived from a per-minute carrier common line charge paid by interexchange carriers and ultimately their subscribers in

[35] *Notice*, ¶¶ 27-30.

the form of increased interstate service rates.[36] CMRS licensees thus already pay universal service subsidies whenever they use telecommunications services that are priced to include universal service subsidy elements, whether those services are provided by local exchange or interexchange carriers.

In order more effectively to administer the USF and to ensure that carriers and their customers understand the funding of the USF, PCIA urges the Commission to eliminate all indirect or implicit subsidies and instead adopt an explicit funding mechanism. This will permit carriers and customers to assess the magnitude of their monetary support for universal service. This approach also will permit regulators more easily to evaluate the efficacy of the USF program and perhaps more readily to make appropriate adjustments.

In this regard, the Commission and the Joint Board should seriously consider the proposal contained in the *Notice* to assess a flat, non-traffic sensitive charge on end users.[37] Alternatively, should the Commission impose the USF funding obligation on carriers, they should be permitted to make a determination to recover the fee payments directly from customers as a separate line item on bills or indirectly through increased service charges.

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[36] *Notice*, ¶ 112.

[37] *Id.*, ¶ 113.

III. UNIVERSAL SERVICE FUNDING MUST BE NARROWLY TARGETED, LIMITED, AND TECHNOLOGICALLY NEUTRAL

The universal service fund must be narrowly targeted towards providing customers in low-income and high-cost areas with the group of telecommunications services defined in this proceeding.[38] Ensuring narrow targeting and limiting the size of the fund goes hand-in-hand with the prevention of cross-subsidization. As stated in Section 254(k), the Commission shall establish rules to ensure that "services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide [universal] services."[39] Such safeguards might include "cost allocation rules, accounting safeguards, and guidelines."[40] Although PCIA intends to address the specific nature of these cross-subsidization rules in the rulemaking that implements Section 254(k),[41] PCIA wishes to underscore the Commission's recognition that competitive services not be cross-subsidized in any way through the universal service program.

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[38] PCIA does not, at this time, generally comment on the nature of the services for which universal service support should be provided. *E.g.*, *Notice*, ¶ 16. PCIA does, however, concur with the Commission's assessment that touch tone service is one of the elements that should be supported by the universal service plan. *See id.*, ¶ 19. The Commission correctly points out that touch tone service is increasingly essential to completing telecommunications transactions. This is certainly true in connection with the delivery of messages to a messaging service subscriber.

[39] 47 U.S.C. § 254(k).

[40] *Id.*

[41] *See Notice*, ¶ 12 n.32.

In the *Notice*, the FCC wisely recognizes the difference between low-income areas and high-cost areas. Many urban, low-income areas already have sufficient telecommunications infrastructure by virtue of their proximity to business and population centers. Thus, these areas do not require more infrastructure, but require a means by which their inhabitants can access the already available services. Consumer vouchers or credit guarantees might provide such access. Such vouchers or credit guarantees are more market-oriented than many other forms of universal service support, because they allow potential customers to choose a communications carrier based on the variety and quality of services offered.[42] Therefore, their use in low-income areas may most effectively achieve the Commission's goal in this proceeding.

Regarding high-cost, rural and insular areas, setting provider compensation by competitive bidding and ensuring that broadband CMRS carriers are permitted to participate as "eligible telecommunications carriers"[43] might result in substantial cost savings. Under a competitive bidding regimen, universal service payments would be determined by the lowest bidding carrier providing services eligible for USF funding.[44] As noted in Docket 80-286 and the *Notice*, it is possible that the lack of

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[42] This option underscores the significance of PCIA's observation above that messaging services do not appear to fall within the scope of the Congressional concept of universal service. As a result, messaging carriers would not be the recipients of voucher funds, a consideration that should be taken into account when establishing USF contribution requirements. *See* discussion at pages 7-8 *supra*.

[43] *See* 47 U.S.C. § 214(e).

[44] *See Notice*, ¶¶ 35-36.

competition in these areas will make such competitive bidding impractical.[45] However, given the ever expanding number of niche providers in the telecommunications industry, it is in the public interest for the Commission to at least determine whether there are in fact a number of parties that want to provide these services.

Finally, wireless services, by their nature, do not require the construction of expensive, wireline infrastructure. Therefore, broadband CMRS might prove to be a cost-effective means of serving high-cost areas. In order to ensure that broadband wireless carriers are not excluded from the opportunity to provide universal service, and to maintain technological neutrality,[46] the Joint Board should pay close attention to the comments of the wireless community in this proceeding.

Holding the total amount of the USF to a minimum in turn reduces the amount to be paid by individual service providers to fund the USF. Minimizing such contributions limits the potential effects of the fees upon competition generally and specific service providers in particular.

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[45] *Notice*, ¶ 37. *See also* Pacific Bell Comments, CC Docket No. 80-286, at 8 (filed Oct. 10, 1995); Southwestern Bell Comments, CC Docket No. 80-286, at 15 (filed Oct. 10, 1995); TDS Telecom Comments, CC Docket No. 80-286, at 68 (filed Oct. 10, 1995).

[46] *Notice*, ¶ 66.

IV. CONCLUSION

PCIA endorses the Commission's statutory mandate to implement an equitable and non-discriminatory universal service regimen. The funding obligations imposed on CMRS providers must take into account their opportunities to participate in receiving USF funds as well as their marketplace environment. PCIA further urges the Commission to utilize as many market-oriented methods as possible to ensure that the fund is narrowly targeted, minimized, and technologically neutral. Finally, the Commission must ensure that the wireless industry has adequate input into the formulation of the universal service policies by the Commission and the Joint Board.

Respectfully submitted,

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